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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2011-678

13 **ERIKA MANUELLA HERNANDEZ**
26437 Whispering Leaves Drive
Santa Clarita, CA 91321
14 Registered Nurse License No. 530416

A C C U S A T I O N

Respondent.

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16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
19 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
20 Consumer Affairs.

21 2. On or about March 3, 1997, the Board of Registered Nursing issued Registered Nurse
22 License Number 530416 to Erika Manuella Hernandez (Respondent). The Registered Nurse
23 License was in full force and effect at all times relevant to the charges brought herein and will
24 expire on September 30, 2012, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Registered Nursing (Board),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code unless otherwise indicated.

1 4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent
2 part, that the Board may discipline any licensee, including a licensee holding a temporary or an
3 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
4 Nursing Practice Act.

5 5. Section 2761 of the Code states:

6 "The board may take disciplinary action against a certified or licensed nurse or deny an
7 application for a certificate or license for any of the following:

8 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

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10 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
11 violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice
12 Act] or regulations adopted pursuant to it.

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14 6. Section 2762 of the Code states in pertinent part:

15 "In addition to other acts constituting unprofessional conduct within the meaning of this
16 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
17 chapter to do any of the following:

18 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed
19 physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or
20 administer to another, any controlled substance as defined in Division 10 (commencing with
21 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
22 defined in Section 4022.

23 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
24 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
25 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
26 himself or herself, any other person, or the public or to the extent that such use impairs his or her
27 ability to conduct with safety to the public the practice authorized by his or her license.

28

7. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

9. Section 118, subdivision (b), of the Code provides that the suspension/expiration/surrender/cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

10. Fentanyl is a Schedule II controlled substance pursuant to Health and Safety Code section 11055(c)(8) and a dangerous drug pursuant to Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(Self Administration of Controlled Substances)

11. Respondent is subject to disciplinary action under Business and Professions Code section 2762, subdivision (b) in that she administered 250 mg. of Fentanyl to herself without a valid prescription. The facts and circumstances are as follows:

12. On or June 27, 2009, Respondent worked the night shift while employed at UCLA Medical Hospital. At or around 4:30 am, Respondent was noticeably absent from her assigned patient's bedside. It was subsequently discovered that the unit restroom was locked and gurgling noises could be heard from inside, where hospital staff subsequently found Respondent in a seizure-like state. Respondent was taken to the emergency room for treatment and later admitted that she had administered Fentanyl to herself that she had removed for a patient that was not assigned to her.

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